

Memorandum

To: File No. 0032112

From: Gary Walters and Matt Erbe

Date: 14 October 2014

Subject: Sykesville Oil Site



ERM has prepared this memorandum to document its review of invoices and other documentation provided to you by the U.S. Coast Guard ("USCG") relating to the Sykesville Oil Site in Sykesville, Maryland (hereinafter "the Site"). In a June 23, 2014 notice letter, USCG claims that it responded to a pollution incident at the Site in April 2004 and has incurred costs amounting to \$627,498.06 since that date. The USCG reportedly engaged other Government agencies and private sector contractors, including the U.S. Environmental Protection Agency (USEPA), to initiate response actions at the Sykesville Oil Site in the May/June 2004 timeframe to address the oil release. In April 2005, Fogle's Septic Clean, Inc. (Fogle's) was identified by USEPA as a responsible party for the oil release. Subsequently, Fogle's entered into an Administrative Order By Consent (AOC) with USEPA to complete the necessary response actions at the Site.

Environmental Resources Management (ERM) was engaged by Fogle's in May 2005 as its primary consultant and contractor to perform the work required by the AOC. Other than a brief transition period in early May 2005, all work at the site by the USCG and its contractors ceased at the time Fogle's executed the AOC and engaged ERM as its contractor. A brief corporate profile of ERM and its qualifications and experience relevant to the Sykesville Oil Site is provided in Attachment 1.

Documents Reviewed by ERM

By letter dated June 23, 2014 the USCG provided notice to Fogle's of costs that the USCG and its contractors, namely the USEPA, the U.S. Army Corps of Engineers (USACE) and its contractor, Plexus Scientific Corporation (Plexus), had incurred during their involvement in the Sykesville Oil Site. ERM reviewed the USCG notice letter along with all of the invoicing by these entities that was provided as backup to the USCG notice letter. In order to determine the reasonableness of the charges reflected on the invoices, ERM attempted to correlate the invoices with services that were

performed by the various parties, which required ERM to review numerous other documents and sources of information, including the following:

- Work Plans
 - *Contractor Quality Control Plan*, Plexus, November 2004
 - *Sampling and Analysis Plan*, Plexus, November 2004
 - *Sampling and Analysis Plan Part II – Quality Assurance Project Plan*, Plexus, November 2004
 - *Site Safety and Health Plan*, Plexus, November 2004
 - *Work Plan, Contractor Quality Control Plan, Site Safety and Health Plan, and Sampling and Analysis Plan*, Plexus, November 2004
- Site Investigation Files
 - Title and Property Search
 - *Draft Screening-Level Historical Assessment of the Obrecht Road Site*, Cabrera Services, February 8, 2005
 - PSA Field Report dated December 2004
 - STL laboratory data, specifically curve charts
 - USCG Marine Safety Laboratory files
 - GPL Analytical Reports
- Daily Construction Quality Control Reports for Plexus, dated from October 2004 to June 2005
- Hard Copy Plexus invoices supplied by USCG, dated from August 2004 to April 2006¹
- USACE Monthly Oversight Reports, dated from April 2004 to September 2006
- ERM Progress Reports, hard copy files, and e-mails

Summary of Key Points

¹ Note that significant amounts of Plexus' invoiced charges are from subcontractors to Plexus but those charges appear only as line-item entries without any backup from the subcontractors. Consequently, it is not possible to confirm that the subcontract charges being invoiced through Plexus are necessary or totally attributable to the subject matter.

Based on our review of the documents made available to ERM, as identified above, ERM offers the following observations and findings regarding the costs charged by the USCG, other Government agencies, and their contractors:

1. Timeframe for USACE and Plexus Charges

In May 2005 ERM was contracted by Fogle's to provide environmental consulting services relating to the Sykesville Oil Site and became the primary contractor overseeing the implementation of work required by the AOC. As the primary contractor, ERM was responsible for preparing all documentation and implementing all work scopes required by the AOC, including the following: preparation and implementation of the Response Action Plan, Extent of Contamination Study Report, Abatement Plan, and final Completion Report. These efforts included continuation of the removal of oil from the existing wells and collection sumps previously installed by Plexus (i.e., work performed by Plexus prior to May 2005).

For the period between June 1, 2005 and April 22, 2006, Plexus indicated there was no work on site, yet they invoiced \$35,307 (see Attachment 2). ERM did not receive any reports or documentation to indicate what services were provided during this period. Plexus reportedly provided a draft technical report to USACE in May 2005 (ref. Invoice Summaries, Attachment 2). However, it wasn't until August 24, 2007 that ERM eventually received a document entitled "Interim Final Report" (dated September 2005), well after initiation of project work by ERM and well after its usefulness to Fogle's and ERM had passed.

2. Delivery of USACE/Plexus Work Products

On multiple occasions in May 2005, ERM requested data from USACE/Plexus in an effort to assist with completion of the Response Action Plan (RAP), which was required to be submitted to USEPA within 15 days following execution of the AOC. An e-mail dated May 19, 2005 (see Attachment 4) documents ERM's request for relevant information (e.g., drilling logs, borings, cross sections, construction details for trenches and extraction sumps, and oil recovery data); however, the materials were not

received². An ERM representative was also sent to Plexus' office and was informed that all Plexus' computers had been removed due to a virus, and they could not access any electronic files (see Attachment 4). Also in May 2005, ERM learned that all Plexus employees working on the project had left the company and a new group of employees started work, none of whom were familiar with the Site. Therefore, valuable project information such as construction completion reports, CAD files including topographic data and as-built drawings, became inaccessible.

Having a report (or at least the technical content of such) from USACE/Plexus in the May/June 2005 timeframe which described the location of oil seeps, geologic structure contours, plume dimensions and other technical data would have reduced the amount of characterization work that ERM needed to perform. For example, ERM completed an extensive soil gas survey to identify areas of concentrated oil contamination in the subsurface and potential migration pathways. ERM and Fogle's were provided with certain data sheets and work plans by Plexus on May 20, 2005; however, ERM never received "As-Built" drawings of trenches or the interceptor trench that had been installed by Plexus. In the absence of this information, in June 2006 ERM needed to proceed with activities to obtain information regarding construction of the recovery trench, which included a video log and pumping of the standpipes at the base of the hill slope along the stream in order to understand why oil was not accumulating in the trench. ERM's costs resulting from work completed to assess the oil accumulation area, CAD reproduction and other activities in May and June 2005, efforts that could have been avoided or significantly reduced if the information and data requested from the USACE and Plexus had been received in a timely manner, total approximately \$36,868.80 (see Table 1 in Attachment 5).

As discussed in the preceding section, the USACE and Plexus charged for a draft/final Technical Report which was reportedly provided to the USACE on September 8, 2005; however, ERM was not provided with this report until August 2007. A March 2006 USACE Progress Report indicates that the Technical Report would not be finalized but notes that it would be turned

² ERM also requested project information in an e-mail dated May 27, 2005 and again via an e-mail exchange dated June 20th and June 22nd (see Attachment 4). Plexus did eventually supply ERM with PDF documents, but never supplied the requested CAD format files (see Attachment 4).

over to the responsible party (see Attachment 3). If a report was not prepared, or requested documentation was provided to Fogle's and ERM several years after their request for that information, then it does not appear appropriate to have invoiced Fogle's for any effort related to the preparation of this documentation.

Plexus' costs for May 2005 totaled \$5,200.18 (Plexus Voucher No. 9 - labor only and notes indicate the issuance of the draft technical report). Additionally, Plexus' costs for March 1 through April 30, 2005 totaled \$43,404.63 (see Attachment 5, Plexus Voucher Nos. 7 and 8, which include notes indicating that no on-site work occurred and efforts related solely to the preparation of the "Final Cost Report"). The total cost of this unnecessary work by Plexus amounts to \$48,605. Neither Fogle's nor ERM has seen the referenced report and questions whether it was necessary or of material benefit to the investigation and remediation of the oil release at the Site.

3. Need for and Utility of Interceptor Trench

Included among the costs for which USCG is requesting reimbursement is the design and construction of an interceptor trench that served no benefit in mitigating potential releases or the restoration of the Site. At the end of all of the required response actions at the Site, ERM recovered in excess of 4,000 gallons of oil from the Site. However, not a single ounce of oil was ever recovered from the interceptor trench. These data provide compelling evidence that there were flaws in either the design of the interceptor trench or its construction, or perhaps a combination of the two. Additional details regarding the design and construction of the interceptor trench are provided in the following paragraphs.

No evidence (e.g., photo-documentation, discharge rates) was ever provided by either the USACE or Plexus that there was an ongoing release of oil of a magnitude proportionate to the initial design of the interceptor trench. Note that the seeps observed by ERM in April 2005 were limited to a small area of black residue on a few rocks in the stream bed.

On November 22, 2004, a new oil seep area was discovered approximately 60 ft. downstream from the proposed interceptor trench location. As a result, the USACE and Plexus decided to modify the trench design to incorporate product collection in the stream downgradient of the new seep.

The initially designed HDPE wall would not be installed. Instead, a catchment would be installed further downstream (i.e., the underflow dam).

There is no mention in the USACE progress reports of oil having been collected from the interceptor trench or the observation pipes. Later, a plan was developed to intercept oil once it reached the stream, and it was decided to install the underflow dam/catchment feature further downstream. The in-stream oil collection catchment dam was installed (completed installation) December 13, 2004. There is no mention of oil collection at the dam in the USACE or Plexus notes and ERM never observed sheens or oil in the stream. In ERM Progress Reports, it is noted that booms were inspected and replaced as necessary due to accumulation of dirt and sediment, but not oil. It should also be noted that the installation of the dam altered the local ecosystem in a negative way, resulting in the deposition of silts and fines behind the dam.

In light of the chronology of events described above and the fact that no oil was ever recovered from the interceptor trench, it is evident that the trench was not necessary and should not have been installed. In fact, subsequent to its installation, the trench was determined by USACE/Plexus to be unnecessary (in favor of the in-stream dam). Distribution of the released fuel oil was broader than initially anticipated as indicated from additional seeps located northeast of the stream and fuel saturated soils area, resulting in modification to the originally planned approach and construction of additional sumps that could optimize fluid recovery. Furthermore, no documentation has been produced that indicates any oil was ever removed from this system.

The invoices reviewed by ERM indicate that the approximate combined costs for USACE and Plexus for the design and construction of the interceptor trench totaled \$101,908.71 (see Plexus Vouchers 2 through 12 associated with Contract Name "Sykes Interim Trench" included as Table 2 in Attachment 5).

Conclusion

Based on ERM's review of the documentation provided to date by USCG and its own knowledge of and file documentation of the response work performed at the Sykesville Oil Site, the following response costs claimed by the USCG were not necessary and did not contribute to the cleanup. It should be noted that a further review of Plexus subcontractor invoices and related documentation may indicate other work that was unrelated to the Site or not necessary.

1. Plexus Work After 6/1/05 When ERM Assumed Control	\$ 35,307
2. Plexus Work Not Produced	\$48,605
3. Interceptor Trench Design and Construction	<u>\$101,908</u>
Subtotal	\$185,820

In addition, there was work performed by Plexus and paid by USCG that could not be found and provided to ERM, thereby resulting in additional duplicative work that had to be performed by ERM. This unnecessary work resulted in additional costs to Fogle's amounting to the following:

1. Failure to provide "as built" drawings of trenches	\$36,869
Total Unnecessary Costs Claimed by USCG	\$222,689